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and Lowell Ness

The Honorable Frederick P. Corbit

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:
GIGA WATT, INC., a Washington
corporation,
Debtor.

MARK D. WALDRON, as Chapter 7
Trustee,
Plaintiff,
vs.

PERKINS COIE, LLP, a Washington
limited liability partnership, *et al.*,
Defendants

and
THE GIGA WATT PROJECT, a
partnership,
Nominal Defendant.

BK. Case No. 2:18-bk-3197-FPC

The Honorable Frederick P. Corbit

CHAPTER 7

Adv. Case No. 2:20-ap-80031

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S STATUS
REPORT AND PROPOSED
DISCOVERY PLAN**

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DEFENDANTS' RESPONSE TO PLAINTIFF'S STATUS
REPORT AND PROPOSED DISCOVERY PLAN - 1

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1 **A. Coordination with Parallel Class Action**

2 As an initial matter, Perkins believes that discovery in this matter and in the
3 *Dam v. Perkins Coie* Class Action matter, pending before Judge Bastian, will
4 significantly overlap. Both cases arise out of the same events, assert similar claims,
5 and seek to recover identical damages from Perkins. Accordingly, Perkins believes
6 that it is inefficient and potentially burdensome to witnesses to develop a discovery
7 plan and deadlines in this matter independently of the class action. Perkins also
8 believes that one judge could best administer both matters in an efficient manner that
9 avoids inconsistent results and rulings. Perkins thus believes it is premature to adopt a
10 discovery plan and deadlines in this case until Judge Bastian rules on the motion to
11 withdraw the reference of this matter to the Bankruptcy Court. That motion is briefed
12 and has been argued.

13
14 **B. Debtor's Discovery Plan and Proposed Deadlines**

15 Perkins offers the following thoughts and objections to the Plaintiff's discovery
16 plan:

- 17 1. Perkins has not received FRCP 26(a)(1) initial disclosures from the Debtor.
18 2. Some of the anticipated discovery listed by the Debtor does not seem very
19 relevant to the existing claims and Perkins may move to limit discovery.
20 3. It appears that the Debtor is changing the nature of its claims to deemphasize
21 alleged escrow violations based on construction of crypto mining pods and to add
22 some new claim related to the loss of an electrical power contract or to an alleged
23 inability to deliver power to token holders. The court should set a deadline for
24 amendments to the complaint. Perkins cannot reasonably say what discovery and/or
25 experts are needed until Debtor's claims and theories come to rest.

1 4. Based on Perkins' current understanding of Debtor's claims it would expect
2 discovery regarding the following matters:

- 3 • Debtor's construction of facilities to host crypto mining operations;
- 4 • Debtor's representation to the SEC that all funds raised by the sale of
5 tokens were used by Debtor to construct crypto mining facilities;
- 6 • Whether Debtor was in a "partnership" with Giga Watt Singapore;
- 7 • The circumstances, mechanics, and terms under which Giga Watt
8 Singapore sold tokens;
- 9 • The extent to which Debtor hosted or was able to host crypto mining
10 activities for token purchasers;
- 11 • The degree to which Debtor was aware of, participated in or
12 communicated regarding Giga Watt Singapore's sale of tokens;
- 13 • Debtor's damages claims.

14 5. Perkins does not disagree with Debtor's proposal that discovery should proceed
15 in two phases. Debtor's proposed discovery deadlines are not unreasonable. That
16 said, discovery should be coordinated with the class action in front of Judge Bastian
17 and timing may be affected by the need to have class certification hearings in that
18 matter. Class counsel may have different or additional views regarding the case
19 deadlines.
20

21 6. It is possible that Perkins will file dispositive motions on several topics
22 depending on the outcome of discovery.

23 7. Perkins does not believe that a crime/fraud exception to the attorney-client
24 privilege applies to its representation of Giga Watt Singapore and Cryptonomous.
25 Perkins would oppose any such motion. Such a motion may have collateral
26

consequences in terms of the Debtor taking positions whereby it is embroiled in the alleged crime/fraud.

8. A trial date next summer is not unreasonable but again, should be coordinated with the class action proceedings pending in front of Judge Bastian.

9. It may make sense to consolidate this action with the Class Action pending in front of Judge Bastian.

C. Arbitration

Perkins believes that the claims asserted by the Debtor are subject to arbitration and does not intend to waive that position by complying with the Court's order to confer and to submit briefs, regarding a discovery plan and case schedule.

DATED this 21st day of June, 2021.

MUNDING, P.S.

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